



SHORELAND ZONING NEWS

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Please Share

For over ten years, the Shoreland Zoning News has been helping town officials better understand the common issues surrounding shoreland zoning administration and enforcement. At least that is the feedback we've been getting. Unfortunately, we also hear that the News is not getting to everyone who would like to see it.

We keep our costs and mailing list manageable by sending four copies to one locally designated contact person to distribute to the selectmen, planning board, appeals board and code officer. If you are the contact person, please make sure the newsletters reach the other town officials.



Replacement of a Nonconforming Structure

Several times a year the shoreland zoning staff receives complaints regarding replacement structures that are significantly larger than the previously existing structure. Sometimes the replacement structure meets the water setback requirement so it is not subject to the statutory expansion limitation for nonconforming structures. Other times, however, the replacement structure is not fully outside the setback area and the new structure is problematic in regard to the 30% expansion limitation.

When a nonconforming structure is removed, or damaged or destroyed by more than 50% of the market value of the structure, it can only be replaced if it is built such that the setback requirement is met to the greatest practical extent, as determined by the planning board. The new location of the replaced or rebuilt structure must be determined based on the size of the previously existing structure, not based on the size of the structure that the owner wishes to build.

The Department has documented cases where a small cottage near the shore of a lake has been removed, only to be replaced by a very large building, with a significant portion at less than the required setback. How

does this occur?

Often it occurs because the planning board misinterprets the shoreland zoning rules. The board incorrectly believes that the replacement building can have the same amount of floor area and volume, plus 30% more if the previous structure hadn't been expanded since January 1, 1989, within the setback area. In addition, the board permits an even greater expansion outside the setback area. The result is a very large structure that extends into the setback area. The small cottage now becomes a five bedroom home with a large deck and a two-car garage, and it is still nonconforming in relation to the water setback requirement.

What actually needs to occur is that the planning board must prohibit any of the structure to be rebuilt within the setback area if a replacement structure the same size as the old structure can be built outside the setback area. Only after a replacement structure of equal size can not be fully located outside the setback area can there be part of the new structure within the setback area. Only after the location of an equal size replacement structure is determined can the owner consider

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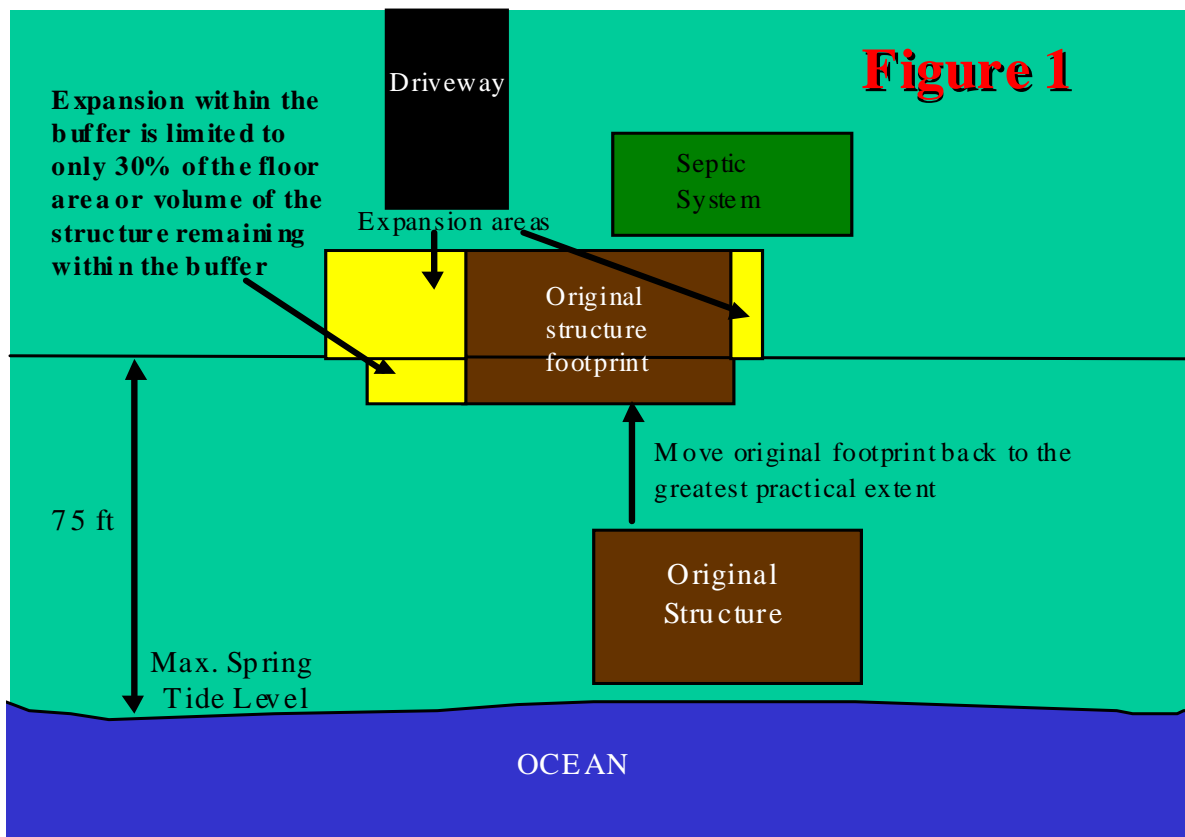
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what the allowable increase in size, if any, can be within the setback area. If the replacement structure of equal size can fit outside the setback area, no portion of the rebuilt structure can be permitted within the setback area. If the rebuilt structure can only partially be setback outside the water setback area, the 30% expansion allowance for the new building can only be based on that part of the new structure that cannot meet the setback requirement. The purposes of the nonconformance provisions are not met if the town allows a replacement structure that can meet setback requirements to be replaced inside the setback area.

Here are several recommended steps a planning board should consider when processing those applications where >50% of the structure is proposed to be removed and the structure expanded:

- 1) Determine where the existing building footprint can be located to meet the setback requirement to the greatest practical extent;
- 2) If the entire footprint is beyond the minimum setback then no portion of the structure or additions can be added within the buffer area;
- 3) If a portion of the existing structure's footprint is still within the buffer area after determining the greatest practical extent then the owner may expand only that portion of the structure by no more than up to 30% within the buffer area;
- 4) Any portion of the structure that is located greater than the minimum setback distance from the resource may be expanded without the 30% restriction so long as the expansion does not violate the 20% lot coverage and any other applicable standard or causes excessive vegetation clearing beyond the allowed clearing provisions. (Note that expansions should not occur on the building side opposite the water if the greatest practical extent was properly considered. Expansions sideward or up would be appropriate.)

A diagrammatic example of the above discussion is provided below (figure 1):



Conflict Resolution: NRPA vs. Shoreland Zoning

This article is written in light of recent conflicts between two regulatory programs, the Mandatory Shoreland Zoning Act, administered locally via an ordinance, and the Natural Resources Protection Act (NRPA), which is administered exclusively by the DEP. The Mandatory Shoreland Zoning Act requires municipalities to regulate land areas within 250 feet of great ponds, rivers, tidal waters, and freshwater and coastal wetlands, and within 75 feet of certain streams. Setback requirements for structures vary, but commonly are either 75 feet or 100 feet.

The NRPA, among many other aspects, regulates the placement of a structure near protected natural resources. Under the NRPA, adjacency jurisdiction extends 75 feet from the shoreline of a waterbody. Normally, the Department requires structures that are not water-dependent to be set back 75 feet from a water resource unless there is no practical alternative.

Conflicts between the two programs have occurred where the Department has approved a municipal ordinance with a 25-foot setback requirement (e.g. General Development District), yet the NRPA still requires a 75 foot setback. Particularly troublesome is that the Department has established by rule (State Guidelines) lesser setbacks in certain situations, then reviewed and approved the town's ordinance that has adopted the lesser setback.

We will look to modify NRPA standards in the near future such that setback requirements will be no more stringent than those in the town's shoreland zone. However, we cannot legally adopt this as a policy in the interim because it directly contradicts the rule. On a case by case basis, staff will take into consideration the town's setback requirement when reviewing any application. New development as close as 25 feet to the resource may be allowed in these situations provided it is in an area already developed.

Please recognize that these matters will continue to occur in those instances where Department staff reviewing permit applications under the NRPA are unfamiliar with local zoning requirements. In those cases a simple telephone call from the applicant or municipal official to Department staff should mitigate the conflict.



Common Oversights—Application Review

Did you remember?

There are several things that are important to remember to check when reviewing a Shoreland Zoning Permit application that sometimes get overlooked. One of these is the cleared opening limitation. It is important that applicants put current and proposed clearing on their plot plans. This helps make sure they are not clearing more than 10,000 square feet or 25% of the lot area within the shoreland zone and that this clearing is all beyond the buffer area.

Another issue is lot coverage. In most zones 80% of the lot must remain vegetated. This includes all the land in the shoreland zone that is to be covered by walks, drives, or structures. If the legal expansion of a non-conforming structure would cause the landowner to exceed the 20% lot coverage limitation or if the property already exceeds the 20% lot coverage limitation, then the expansion must be denied.

Landowners also often forget that all applications that involve soil disturbance and require a permit must have a written erosion and sedimentation control plan to accompany their permit application. All projects involving soil disturbance must use adequate measures to prevent erosion and sedimentation including, but not limited to, silt fence, hay/straw mulch, and riprap, as appropriate.



Reminder:

On a biennial basis, municipal code enforcement officers must file a report with the Department summarizing essential transactions of that office. The report, required by law (38 M.R.S.A. §441.3. C), must include permit as well as enforcement data. By the time you receive this newsletter, all code officers should have filed their respective reports with the Department. If you did not receive a reporting form, or have misplaced the form, please contact us. (***NOTE:** At printing time we have received reports from only 58% of the ~450 towns required to report. Failure to submit a report will be a consideration should formal enforcement action be sought*).

Contact Us:

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Questions & Answers:

- Q. Our last copy of the shoreland zoning map has disappeared or is too faded to read. Now what do I do?
- A. The town should **always** have a copy of the original in a file somewhere, however if you are unable to locate it then contact us. The Department maintains files for every organized town. The file includes a copy of the ordinance and map, subsequent amendments thereto, and other miscellaneous correspondence. We are willing to release our copy to a municipal official for several hours so that individual may make a copy at a local copy center. Note, however, that if a certified copy cannot be located, the town may need to formally re-adopt the map.



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